THE HONOURABLE SRI JUSTICE RAMESH RANGANATHAN

W.P. Nos. 11600/1998 and 16826/1999

DATED: 29-08-2007

W.P. No. 11600 of 1998

Between:-

Buddha Venkata Rao and 10 others.

…PETITIONERS

And

The Government of Andhra Pradesh, represented by its Secretary, Industries & Commerce Department, Secretariat buildings, Hyderabad and 4 others.

..RESPONDENTS

W.P. No. 16826 of 1999

K. Prabhu Vara Prasad.

…PETITIONER

And

The Director of Sugar & Cane Commissioner, Government of A.P. Hyderabad and 4 others.

..RESPONDENTS

THE HONOURABLE SRI JUSTICE RAMESH RANGANATHAN

W.P. Nos. 11600 of 1998 and 16826 of 1999

COMMON ORDER

W.P. No. 11600 of 1998 is filed by nine employees of the 3rd respondent society questioning the proceedings of the 3rd respondent dated 11-02-1998, as arbitrary and illegal and voilative of the guidelines issued by the 1st and 2nd respondents. They seek a consequential direction that the order of the 3rd respondent dated 11-02-1998 be set aside insofar as regularizing the services of the 4th respondent as Clerk Grade-II is concerned or to alternatively direct the 3rd respondent to regularize the services of the 4th respondent as Clerk Grade-IV.

In the affidavit, filed in support of the writ petition, it is stated that petitioners 1, 2, 3, 5 and 6 were working as Clerks Grade-III, that petitioners 4, 7 to 11 were working as Clerks Grade-IV and that all of them were regularized in the categories of Clerk Grade-III or Clerk Grade-IV as the case may be. Petitioners would refer to the hierarchy of posts to submit that recruitment is done only in Clerk Grade-IV category and, depending upon the availability of the vacancies, Clerks

Grade-IV are being promoted as clerk Grade-III and further promoted as Clerks Grades-I and II and that this recruitment policy is as notified by the Commissioner of Sugars, Government of A.P. Petitioners would contend that the 4th respondent, while working as an NMR employee on daily wages, filed W.P. No. 16151 of 1988 for regularization of his services, that the writ petition was allowed by the Division Bench of this Court, by order dated 12-09-1996, that consequent to the directions of this Court the 1st respondent issued Memo dated 11-02-1998, wherein after considering the qualifications of the 4th respondent, it was held that his services could not be regularized in the category of P.A. to Managing Director, as he did not have the qualifications for the said post, that the Government had considered his case for regularization as per the guidelines issued in G.O. Ms. No. 212 dated 22-04-1994 and had advised the 2nd respondent to issue instructions to the 3rd respondent to regularize his services in the clerical Grade from the date of the order. Petitioners would contend that, contrary to the directions, the 3rd respondent had regularized the services of the 4th respondent as Clerk Grade-II. According to the petitioners, vacancies in the posts of Clerk Grade-II are filled up only by promotion of Clerks Grade-III and that there is no direct recruitment to the post of Clerk Grade-II. Petitioners would contend that the 1st respondent had issued proceedings dated 11-02-1998 according permission to regularize the services of the 4th respondent only as a

Clerk, that he should have been regularized only in the post of Clerk Grade-IV from the date of issue of the regularization order and that the 4th respondent could not be placed at a higher pedestal ignoring the claim of the petitioners and without considering their cases while regularizing the services of the 4th respondent and that the entire procedure adopted was illegal and was only to favour the 4th respondent. Petitioners would contend that, by placing the 4th respondent in the category of Clerk Grade-II, he was made senior to all the petitioners herein, that they had put in 5 to 30 years of service, that they are now juniors to the 4th respondent, that the 3rd respondent, under the guise of implementing the orders of this Court, had violated the guidelines issued by the 1st and 2nd respondents in regularizing the services of the 4th respondent in the cadre of Clerk and that the 4th respondent could not be regularized except in the initial category of Clerk Grade-IV. Petitioners would contend that this Court had, on compassionate grounds, directed the 3rd respondent to regularize the services of the 4th respondent in accordance with G.O. Ms. No.212 dated 22-04-1994 and that, ignoring the claim of the petitioners, the 4th respondent could not have been appointed as Clerk Grade-II.

In the counter affidavit, filed on behalf of respondents 1 and 2, it is stated that as per the recruitment procedure daily wage workers are to be absorbed in permanent posts, seasonal in nature, in the lower

cadre only, that since the 4th respondent was working as an NMR on consolidated pay he could not be considered as a regular employee till he was recruited as per the recruitment procedure, that his services were mostly engaged wherever necessary as per the exigencies of work in Cane Accounts, office of the Chief Engineer and in General Administration Department and that his services were also utilized as P.A. to Managing Director though he was not qualified for the post. Reference is made to the order of this Court, in W.P. No. 16156 of 1988, and to the directions passed therein. Reference is also made to Contempt Case No. 1496 of 1997 to submit that the Government had considered the case of the 4th respondent and come to the conclusion that his services could not be regularized in the cadre of P.A. to Managing Director and had directed the Commissioner of Sugar to issue necessary instructions to the then Managing Director of the Factory to regularize the services of the 4th respondent in the cadre of Clerk from the date of issue of the order or with prospective effect, but the Managing Director had instead appointed him as Clerk Grade-II. Respondents would refer to the various categories of employees in the 3rd respondent society and submit that while permanent employees, and seasonal employees on regular pay scales, were regular employees, daily wagers were purely casual in nature and that they would be engaged only as per the need and requirement of the factory. Respondents would submit that regularization of the services

of the 4th respondent as Clerk Grade-II, overlooking seniority of many qualified persons working for the last several years, was not correct and was also detrimental to the interest of persons working in the feeder category, that the 3rd respondent ought to have appointed the 4th respondent as Clerk Grade-IV as it was within the purview of the management and that the erstwhile Managing Director ought to have taken necessary action keeping in view the vacancy position, the order of the High Court and the Government orders in this regard.

In his counter affidavit, the 4th respondent would refer to the circular of the Director of Sugars dated 21-08-1987 and submit that appointment was only by way of direct recruitment. He would refer to the fact that, in pursuance of the selections made on 30-11-1982 by a duly constituted Selection Committee and on being satisfied with his qualifications, he was appointed as P.A. to Managing Director with effect from 08-03-1983, that subsequently the 3rd respondent had invited applications for filling up vacancies in various categories including for the post of P.A. to Managing Director vide advertisement dated 26-05-1983, 06-03-1985 and 07-02-1987, but there were no candidates who satisfied the qualifications/eligibility for applying the post of P.A. to Managing Director, that he was fully eligible to apply for the said post as per the advertisement and, taking into account his qualifications, he was appointed as P.A. to Managing Director on a consolidated salary. He would contend that, in view of the interim orders passed in W.P. No. 16156 of 1988, he was continued as P.A.

to Managing Director during the pendency of the writ petition and, since he possessed the requisite qualifications, he had submitted a representation on 26-03-1996 requesting that he be appointed to the post of Administrative Officer/Chief Personnel Officer in the said sugar factory etc., but the appointing authority, vide proceedings dated 22-05-1996, had only agreed to appoint him to the post of P.A. to Managing Director on the condition that he withdrew the writ petition and that, subsequently, the said proceedings were kept in abeyance.

The 4th respondent would also refer on the order of this Court, in W.P. No. 16156 of 1988, to contend that his appointment as Clerk Grade-II could not be questioned by the petitioners herein. He would submit that his appointment as Clerk Grade-II was not contrary to the recruitment rules, that there are no hierarchy of promotions, that there is no policy that the initial recruitment should only be to the post of Clerk Grade-IV, that there are no promotions in Co-operative Sugar Factories and that the circular dated 21-08-1987 merely required candidates to be interviewed by the Selection Committee for being appointed to different categories of the posts.

Sri V.V.N. Narayana Rao, learned counsel for the petitioners, would vehemently contend that the order of the Division Bench did not enable the 3rd respondent to consider the case of the 4th respondent alone as Clerk Grade-II nor did it require his case to be considered contrary to the existing rules. Learned counsel would submit that the

petitioners were all far seniors to the 4th respondent and ought to have been promoted as Clerks Grade-II before the case of the 4th respondent was considered for appointment to the said post. Learned counsel would contend that considering the case of the 4th respondent alone for appointment to the post of Clerk Grade-II is in violation of the rules in this regard, is arbitrary and in violation of the Articles 14 and 16 of the Constitution of India.

Dr. P.B. Vijay Kumar, learned counsel for the 4th respondent, on the other hand, would submit that the order of the Division Bench of this Court required the case of the 4th respondent to be considered for appointment as P.A. to Managing Director, giving weightage for his past 13 ½ years service and disentitled the 3rd respondent from considering anybody else before the case of the 4th respondent could be considered. Learned counsel would submit that the action of the 3rd respondent, in appointing the 4th respondent as Clerk Grade-II, could not be faulted at the instance of the petitioners herein. Learned counsel would submit that, questioning the action of the 3rd respondent society in appointing him as Clerk Grade-II and not as P.A. to Managing Director as directed by the Division Bench of this Court, the 4th respondent had filed W.P. No. 12087 of 1998 and that this Court, by order dated 06-06-2007, had dismissed the said writ petition. Learned counsel would place reliance on the circular dated 21-08-1987 to contend that there are no promotions in Co-operative Sugar

Factories and that all vacancies in Co-operative Sugar Factories are required to be filled up by direct recruitment by a duly constituted Selection Committee. Learned counsel would contend that, in any event, the 4th respondent, despite possessing the qualifications of double post-graduation with an M.B.A, was appointed only as Clerk Grade-II, instead of being appointed as P.A. to Managing Director and that his services could be terminated if this Court were to direct consideration of his candidature afresh, along with the petitioners, to the post of Clerk Grade-II. Learned counsel would point out that the judgment of the Division Bench required weightage to be given for his past services and, if any directions were now given to consider his case afresh, the services rendered by him as Clerk Grade-II ever since his appointment on 11-02-1988 would be ignored and he would be denied his retiral benefits. Learned counsel would beseech this Court not to interfere with the order appointing the 4th respondent as Clerk Grade-II in view of the long lapse of more than a decade since his appointment. Learned counsel would submit that the 4th respondent was due to retire within three years and, in order to avoid the possibility of his services being terminated, he was willing to have his services converted as Clerk Grade-III from the date he was appointed as Clerk Grade-II on 11-02-1998 and, in view of the concession now given by him, this Court should safeguard the interest of the 4th respondent and ensure that, under the guise of considering his case afresh, his services are not terminated, that too at the fag end of his

tenure with the 3rd respondent spanning over 2 ½ decades.

Before examining the rival contentions it is necessary to take note of Clause 3 (i) and (ix) of the Circular dated 21-08-1987 which reads thus:

> "(3) The gist of the instructions issued in the above circular are briefly noted hereunder for information and guidance by the Managing Directors
>
> (i) All the vacancies in the Coop. Sugar Factories should be filled by direct recruitment by Selection Committee.
>
> (ix) There are no promotions in Coop. Sugar Factory and each post has to be filled in by appointment by Selection Committee.

The aforementioned clauses make it clear that there are no promotions and that all vacancies in Cooperative Sugar Factories should be filled up by direct recruitment by a Selection Committee.

While Sri V.V.N. Narayana Rao, learned counsel for the petitioners, would seek to place reliance on certain subsequent instructions said to have been issued by the Commissioner of Sugars dated 15-05-1998, the fact remains that the said circular is not part of the record. Learned counsel would contend that respondents 1 and 2 had referred to certain rules and regulations in their counter affidavit and that this circular dated 15-05-1998 was the rules and regulations applicable. I must express my inability to agree. Except for a vague reference in the counter affidavit with regards rules and regulations, neither respondents 1 and 2 nor the 3rd respondent have chosen to

place the applicable rules before this Court. I do not see any reason to examine any circular, which the learned counsel for the petitioner passes across the bar, in the absence of a specific plea in this regard in the affidavit filed in support of the writ petition. In any event, the circular dated 15-05-1998 is subsequent to the appointment of the 4th respondent as Clerk Grade-II on 11-02-1998 and cannot obviously apply retrospectively to such an appointment. Viewed from any angle, the circular dated 15-05-1998 would not apply to the present fact situation.

Even if it is the circular dated 21-08-1987 which must be held applicable, appointment of the 4th respondent as clerk Grade-II, by way of direct recruitment, could only have been made by the Selection Committee after considering all eligible candidates, both internal and external. Dr. P.B. Vijay Kumar, learned counsel for the 4th respondent, would, however, contend that in view of the orders of the Division Bench it was the case of the 4th respondent alone which was required to be considered to the exclusion of the petitioners or others similarly situated and, since the order of the Division Bench had attained finality and has not been the subject matter of the challenge before the Supreme Court by the petitioners or any of the other respondents, the said judgment in rem was binding on them.

It is necessary, therefore, to refer to the order of the Division Bench in W.P. No. 16156 of 1988 dated 12-09-1996. The said order reads thus:

"This writ petition has been filed questioning the action of the respondents in not regularizing the services of the petitioner as P.A. to Managing Director. The petitioner had been appointed on a consolidated pay of Rs. 450/- per month way back in the year 1983. In the year 1988, applications were called for, for open market selection by advertising in Eenadu Telugu Newspaper on 7-2-1987. Some applications were received including that of the petitioner. But, selection committee was not constituted and as such, selection process 2was not undergone. Consequent the petitioner was continued on temporary basis and that is very evident by the proceedings of the 1st respondent dt. 17-10-1988. Even now, he remained temporary working as P.A. to Managing Director of the 1st respondent factory. Now, Mr. P.B. Vijay Kumar, the learned counsel for the petitioner places before us the proceedings dated 22-5-96 passed by the Special Commissioner of Sugar and Case Commissioner/Director of Sugar in RC. No. 11597/96/B1 to the effect that even though the petitioner had requested for considering his case for appointment to the post of Administrative Officer & Chief Personnel Officer, but he is kept in full Additional charge of the post of Administrative Officer & Chief Personnel Officer temporarily subject to the condition that the writ petition filed by the petitioner is withdrawn. But how long the petitioner will be kept in additional charge and on officiating basis is a question for consideration. Time and again, the Supreme Court and the High Courts including this Court had deprecated the practice of keeping an incumbent in the post temporarily for years to come and in this case it is since 13 ½ years that the petitioner had been temporarily holding the post of P.A. to Managing Director on consolidated pay and we are told by the counsel for the petitioner that his present consolidated pay is Rs. 2100/- per month. We do not really appreciate this kind of attitude on the part of the Respondents. It is now time to consider the case of the petitioner for regularization of services by constituting a selection committee for permanent appointment in the cadre of P.A. to Managing Director. Weightage has to be given to the petitioner for this 13 ½ years of service rendered by him subject to the condition that no adverse remarks have been communicated to him. Open market selection at this stage may cause serious hardship to the petitioner. The case of the petitioner shall be considered by the 2nd respondent within a period of one month from

> the date of the receipt of this order in the light of the directions issued above. Meanwhile, he shall not be disturbed from his existing post. If he is selected, he shall be granted monetary benefits from the date of the selection. He shall not be entitled for any past increments and counting of service. Any other person for appointment to the said post shall not be considered unless the case of the petitioner is considered as mentioned supra.
>
> The writ petition is disposed of accordingly. No costs."

It is clear from the order of the Division Bench that the 2nd respondent i.e. Director of Sugars was required to consider the case of the 4th respondent herein within a period of one month from the date of receipt of the order, in the light of the directions issued by the Division Bench, which required them to consider the case of the 4th respondent herein for regularization of his services by constituting a Selection Committee for permanent appointment in the cadre of P.A. to Managing Director. The Division Bench also directed that weightage could be given to the 4th respondent herein for the 13 ½ years of service rendered by him subject to the condition that no adverse remarks had been communicated to him. The Division Bench also observed that open market selection at this stage may cause serious hardship to the 4th respondent herein and that no other person should be considered for appointment to the said post unless his case was considered.

In view of the orders of the Division Bench holding that open market selection at this stage may cause serious hardship to the 4th

respondent herein, the respondents were justified in not issuing a notification inviting applications from outsiders for appointment to the post in which the services of the 4th respondent herein was sought to be regularized. The order of the Division Bench did not disable the respondents herein from considering the case of other internal candidates. All that the Division Bench held is that no other person would be considered for appointment unless the case of the 4th respondent was considered. The order of the Division Bench did not prohibit the respondents from considering the case of the 4th respondent, along with other internal candidates, who were also eligible to be considered for appointment to the post of Clerk Grade-II. The mere fact that the 4th respondent had approached this Court would not entitle him to claim consideration of his case alone to the detriment of other eligible internal candidates working in the 3rd respondent society nor can the order of the Division Bench be understood to have conferred any such benefit on him. Both in accordance with the Division Bench judgment, in W.P. No.16156 of 1988 dated 12-09-1996, and the circular dated 21-8-1987, the case of the 4th respondent ought to have been considered along with all other internal eligible candidates.

Dr. P.B. Vijay Kumar, learned counsel for the 4th respondent, would contend that the case of the 4th respondent was considered only in accordance with G.O. Ms. No. 212 dated 22-04-1994. It needs no

reiteration that, in addition to other conditions imposed therein, the requirement is of a vacancy being available. Mere existence of a vacancy would not justify the case of the 4th respondent alone being considered for appointment for regularization as Clerk Grade-II overlooking the claims of others who were equally, if not more, eligible to be considered for appointment to the said post. The action of the 3rd respondent in considering the case of the 4th respondent alone for regularization as Clerk Grade-II, without simultaneously examining the case of the petitioners herein for appointment to the said post, is arbitrary and in violation of Articles 14 and 16 of the Constitution of India.

The question is as to what relief the 4th respondent is now entitled to?. The fact remains that the 4th respondent is a double post-graduate with an M.B.A and has put in more than 2 ½ decades of service in different capacities in the 3rd respondent society. He has also been working for nearly a decade as Clerk Grade-II. He is willing, if need be, to have his services converted as Clerk Grade-III from the date he was appointed as Clerk Grade-II on 11-02-1998. This concession is made on the apprehension that his services may be terminated.

It is the case of the petitioners, and that of the respondents 1 and 2, in their respective counter affidavits that the 4th respondent herein could only have been appointed as Clerk Grade-IV. It is

nobody's case that the 4th respondent should be thrown out of service. I see no basis in the apprehension of Dr. P.B. Vijaya Kumar that any directions now issued to the 3rd respondent to constitute a Selection Committee to consider the case of the 4th respondent along with all other eligible internal candidates for appointment to the post of Clerk Grade-II would result in his services being terminated.

It is not the case of the 4th respondent that the writ petition is liable to be dismissed on the ground of latches. The present writ petition came to be filed on 23-04-1998, just two months after the 4th respondent was appointed as Clerk Grade-II. While long lapse of nearly a decade may justify the 4th respondent not being thrown out of employment, it would also not justify excluding consideration of the case of the petitioners, if their submission that they are seniors and have put in longer periods of service than the 4th respondent is true.

Ends of justice would be met if the 3rd respondent were directed to invite applications for appointment to the post of Clerk Grade-II from all eligible internal candidates working in the 3rd respondent society as on 11-02-1998, (when the 4th respondent was appointed as Clerk Grade-II), consider their cases and thereafter pass orders in accordance with law. Needless to state that, in case appointment of the 4th respondent as Clerk Grade-II is upheld, he shall be entitled to have his service benefits computed from the date of his appointment on 11-02-1998. Even in case some other candidate, and not the 4th

respondent, is found fit to be appointed as Clerk Grade-II, the 3rd respondent shall examine the request of the 4th respondent for conversion of his post to that of Clerk Grade-III, from the date of his appointment as Clerk Grade-II i.e. 11-02-1988, in accordance with law.

Dr. P.B. Vijay Kumar, learned counsel for the 4th respondent, expresses apprehension that if the services of the 4th respondent were to be converted as Clerk Grade-III, the official respondents may seek to recover the differential salary paid to him earlier. This apprehension is also not well founded. As the appointment of the 4th respondent as Clerk Grade-II is not by fraud or misrepresentation, it is well settled that, for the services rendered by him earlier, the salary paid cannot be recovered later. In any event this question is premature and does not necessitate adjudication as at present. Needless to state that, in case any such coercive steps are taken by the respondents, it is always open to the 4th respondent to avail such remedies as are available to him in law. The 3rd respondent shall take necessary steps, in accordance with the directions aforementioned, as expeditiously as possible, in any event, not later than four months from the date of receipt of a copy of this order. Till an appropriate decision is taken by the 3rd respondent, on the basis of the recommendations of the Selection Committee, status quo as on today shall continue.

W.P. No. 16826 of 1999

The petitioner herein is the 4th respondent in W.P. No. 11600 of

1998. He questions the action of the respondents, in not promoting him to the post of Supervisor 'B' Grade to which he is eligible, as illegal and seeks a consequential direction to promote him to any higher Supervisory 'B" Grade post on par with other employees who were promoted notwithstanding the pendency of the present writ petition with effect from 20-03-1999.

The relief sought for in this writ petition would depend on the decision to be taken by the Selection Committee with regards the petitioner's entitlement to be appointed as Clerk Grade-II with effect from 11-02-1998. Needless to state that, in case the appointment of the petitioner as Clerk Grade-II is upheld, he shall be entitled to have his case considered for subsequent promotions in accordance with law.

Both the writ petitions are, accordingly, disposed of. No costs.

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RAMESH RANGANATHAN, J

Dated: 29-08-2007
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